RECENT DECISIONS

CARRIERS—WHO ARE PASSENGERS—MANNER OF BOARDING STREET CAR.—The plaintiff signalled an approaching street car to stop at a point where passengers were not usually taken on. The motorman did not see his signal and slacken the speed of the car, and it was running rapidly as it passed him. Nevertheless, the plaintiff attempted to board it by jumping on the steps of a closed door on the left-hand side of the car; and before the conductor could open the door he was knocked off by a pole and received the injuries complained of. *Held,* the plaintiff was not a passenger. *Horwitz* v. *Jefferson County Traction Co.* (Tex. Civ. App.), 188 S. W. 26.

The relation of carrier and passenger is founded upon contract; therefore, there must be an offer on the part of the person intending to become a passenger and an acceptance of that offer by the carrier in order for the relationship to be created. *Schepers* v. *Union Depot Ry. Co.,* 126 Mo. 665, 29 S. W. 712. In the case of street cars this contract is usually implied, and the question in the great majority of cases is to determine whether such a contract is to be implied from the acts of the parties.

It is generally agreed that one who attempts to board a car which is standing still for the purpose of receiving passengers thereby becomes a passenger. *Waller* v. *Wilmington City Ry.,* 5 Pen. (Del.) 374, 61 Atl. 874; *Gaffney* v. *St. Paul City Ry.,* 81 Minn. 459, 84 N. W. 304. This is true even though the conductor does not know of his presence, and the car starts before he is safely in. See *Rand* v. *Boston, etc., Ry. Co.,* 198 Mass. 569, 84 N. E. 841; *Kane* v. *Ry. Co.,* 100 Ill. App. 181. When a person gets on, or attempts to get on, a car which has stopped in response to his signal, he is passenger. *Davey* v. *Greenfield, etc., Ry. Co.,* 177 Mass. 106, 58 N. E. 172; *Lockwood* v. *Boston, etc., Ry. Co.,* 200 Mass. 537, 86 N. E. 934.

When a car slows down, at a regular stopping place, in response to the signal of one who attempts to board it, he becomes a passenger; since the slowing down of the car is considered an acceptance on the part of the carrier. *Reynolds* v. *Railroad Co.,* 92 Va. 400, 23 S. E. 770; *Citizen's Street Ry. Co.* v. *Merl,* 26 Ind. App. 284, 59 N. E. 491; *Eikenberry* v. *St. Louis Transit Co.,* 103 Mo. App. 424, 80 S. W. 360. Under the same circumstances, one who gets on steps not intended for passengers may become one because of the implied assent of the motorman. See *Nolan* v. *Metropolitan Street Ry. Co.,* 250 Mo. 602, 157 S. W. 637. And so, where the motorman intends to stop his car in response to the signal, but the signaler gets on before the car has been stopped, he is generally held to be a passenger. *Marshall* v. *Boston, etc., Ry. Co.,* 203 Mass. 40, 88 N. E. 1094; *Lewis* v. *Electric Co.,* 39 Tex. Civ. App. 625, 88 S. W. 489. *Contra, Shaefer* v. *St. Louis, etc., Ry. Co.,* 128 Mo. 64, 30 S. W. 331. When a car which one has signaled slows down at a regular stopping place and he attempts to board it, he is a passenger even though the motorman did not see his signal. *O'Mara* v. *St. Louis Transit Co.,* 102 Mo. App.

202, 76 S. W. 680. But this is not true if the car, though it has slowed down, is still running rapidly. *Balto. Traction Co.* v. *State*, 78 Md. 409, 28 Atl. 397.

A person who attempts to board a car which has not slowed down in response to his signal is not a passenger, for no acceptance of his offer can be implied. *Schepers* v. *Union Depot Ry. Co., supra.* And the same result follows when a person attempts to board a moving car to which he has not signaled at all. *Foster* v. *Electric Co.*, 35 Wash. 177, 76 Pac. 995; *Mathews* v. *Metropolitan St. Ry. Co.*, 156 Mo. App. 715, 137 S. W. 1003. One is not a passenger who, under the same circumstances, gets on a step not intended for passengers. *Speaks* v. *Metropolitan St. Ry. Co.*, 179 Mo. App. 311, 166 S. W. 864. Nor one who attempts to get on a car not intended for passengers. *Howard* v. *Ry. Co.*, 125 App. Div. 776, 110 N. Y. Supp. 125. And where one jumped on the steps of a moving car and declined to come inside when told that he could not ride there, he was not considered a passenger. *Hogner* v. *Boston Elevated Ry.*, 198 Mass. 206, 84 N. E. 464, 15 L. R. A. (N. S.) 960.

CONFLICT OF LAWS—VALIDITY OF FOREIGN MARRIAGES—EVASION OF LAW OF DOMICILE.—In order to evade the law of their domicile prohibiting a marriage between uncle and niece, the parties went to another state where such marriages were legal and were there married. A suit was brought by an heir of the respondent's husband to have the marriage declared void. *Held,* the marriage is valid. *Fensterwald* v. *Burk* (Md.), 98 Atl. 358.

As a general rule, the laws of the *lex loci contractus* determine the validity of a marriage, and hence marriages valid where celebrated are valid everywhere. *Medway* v. *Needham,* 16 Mass. 157, 8 Am. Dec. 131; *Jackson* v. *Jackson,* 82 Md. 17, 33 Atl. 317, 34 L. R. A. 773; *Hiram* v. *Pierce,* 45 Me. 367, 71 Am. Dec. 555; MINOR, CONFL. L., § 73. There is an important exception to this general rule universally recognized among Christian countries, namely, that marriages which contravene the laws of Christendom, such as bigamous and incestuous marriages, will not be recognized anywhere. MINOR, CONFL. L., § 75; STORY, CONFL., § 113, *et seq.* To be incestuous as the term is commonly accepted in Christian countries, the marriage must be between persons who are related by blood in the lineal ascending or descending line, or between brothers and sisters, whether of whole or half blood. See *Sutton* v. *Warren,* 10 Metc. (Mass.) 451; MINOR, CONFL. LAWS, § 75; STORY, CONFL. L., § 114, *et seq.;* 1 BISHOP, MARRIAGE, DIVORCE AND SEPARATION, § 861.

A second exception to the general rule above mentioned is that those marriages celebrated in another state in order to evade a statute of the state of domicile positively prohibiting marriages between such persons as *contra bonos mores* and, therefore, against the policy of the domicil state, are void in that state no matter where celebrated. *Kinney* v. *Commonwealth,* 30 Gratt. (Va.) 636, 32 Am. Rep. 690. Marriages between white people and negroes, prohibited in most states, are generally considered as coming within this class. *Greenhow* v. *James' Exc.,* 80 Va. 636, 56 Am. Rep. 603; *State* v. *Kennedy,* 76 N. C. 251; *Kinney v. Common-*